

FIRST REGULAR SESSION

HOUSE BILL NO. 646

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHIEFFER (Sponsor), MITTEN, ROORDA,
HUMMEL AND NORR (Co-sponsors).

1145L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 130.047, 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1110, RSMo, and to enact in lieu thereof eight new sections relating to telephone calls.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 130.047, 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and
2 407.1110, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as
3 sections 130.047, 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, 407.1112, and 407.1113,
4 to read as follows:

130.047. Any person who is not a defined committee who makes an expenditure or
2 expenditures aggregating five hundred dollars or more in support of, or opposition to, one or
3 more candidates or in support of, or in opposition to, the qualification or passage of one or more
4 ballot measures, other than a contribution made directly to a candidate or committee, shall file
5 a report signed by the person making the expenditures, or that person's authorized agent. The
6 report shall include the name and address of the person making the expenditure, the date and
7 amount of the expenditure or expenditures, the name and address of the payee, and a description
8 of the nature and purpose of each expenditure. **Except as otherwise required under subsection**
9 **5 of section 407.1112**, such report shall be filed with the appropriate officer having jurisdiction
10 over the election of the candidate or ballot measure in question as set forth in section 130.026
11 no later than fourteen days after the date of making an expenditure which by itself or when added
12 to all other such expenditures during the same campaign equals five hundred dollars or more.
13 If, after filing such report, additional expenditures are made, a further report shall be filed no
14 later than fourteen days after the date of making the additional expenditures; except that, if any

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 such expenditure is made within fourteen days prior to an election, the report shall be filed no
16 later than forty-eight hours after the date of such expenditure. The provisions of this subsection
17 shall not apply to a person who uses only the person's funds or resources to make an expenditure
18 or expenditures in support of or in coordination or consultation with a candidate or committee;
19 provided that, any such expenditure is recorded as a contribution to such candidate or committee
20 and so reported by the candidate or committee being supported by the expenditure or
21 expenditures.

407.1095. As used in sections 407.1095 to 407.1110, the following words and phrases
2 mean:

3 (1) **"Automated call", any prerecorded or synthesized voice message resulting from**
4 **the use of an automatic dialing-announcing device but does not include communication:**

5 (a) **To any residential subscriber with that subscriber's prior express invitation or**
6 **permission;**

7 (b) **By or on behalf of any person or entity with whom a residential subscriber has**
8 **had a business contact within the past one hundred eighty days or a current business or**
9 **personal relationship;**

10 (c) **When the message is preceded by a live operator who obtains the subscriber's**
11 **consent before the message is delivered;**

12 (d) **From a public safety agency or other entity notifying a person of an emergency.**
13 **Such calls may include Amber alert notification issued under section 210.1012;**

14 (e) **From school districts to students, parents, or employees;**

15 (f) **From employers to employees regarding employment-related matters;**

16 (g) **From a telecommunications company, as defined in section 386.020, or the**
17 **directory publisher affiliates of any such company, calling solely for the purpose of**
18 **verifying the delivery of products or services that were provided at no charge to the**
19 **residential subscriber; or**

20 (h) **From a person or entity requesting the residential subscriber's personal opinion**
21 **regarding a public policy matter, political candidate, or issue before the voters or which**
22 **may come before the voters, where the request for an opinion is made for a bona fide**
23 **information-gathering purpose;**

24 (2) **"Automatic dialing-announcing device", a device that selects and dials**
25 **telephone numbers and that, working alone or in conjunction with other equipment,**
26 **disseminates a prerecorded or synthesized voice message to the telephone number called;**

27 (3) **"Caller identification service", a type of telephone service which permits telephone**
28 **subscribers to see the telephone number of incoming telephone calls;**

29 [(2)] (4) **"Political solicitation"**, any voice communication from a live operator or
30 **through the use of an automatic dialing-announcing device for the purpose of promoting,**
31 **advertising, or campaigning for or against a political candidate or political issue;**

32 (5) "Residential subscriber", a person who, for primarily personal and familial use, has
33 subscribed to residential telephone service, wireless service or similar service, or the other
34 persons living or residing with such person;

35 [(3)] (6) "Telephone solicitation", any voice, facsimile, short messaging service (SMS),
36 or multimedia messaging service (MMS), for the purpose of encouraging the purchase or rental
37 of, or investment in, property, goods or services, but does not include communications:

38 (a) To any residential subscriber with that subscriber's prior express invitation or
39 permission;

40 (b) By or on behalf of any person or entity with whom a residential subscriber has had
41 a business contact within the past one hundred eighty days or a current business or personal
42 relationship;

43 (c) By or on behalf of an entity organized pursuant to Chapter 501(c)(3) of the United
44 States Internal Revenue Code, while such entity is engaged in fund-raising to support the
45 charitable purpose for which the entity was established provided that a bona fide member of such
46 exempt organization makes the voice communication;

47 (d) By or on behalf of any entity over which a federal agency has regulatory authority
48 to the extent that:

49 a. Subject to such authority, the entity is required to maintain a license, permit or
50 certificate to sell or provide the merchandise being offered through telemarketing; and

51 b. The entity is required by law or rule to develop and maintain a no-call list;

52 (e) By a natural person responding to a referral, or working from his or her primary
53 residence, or a person licensed by the state of Missouri to carry out a trade, occupation or
54 profession who is setting or attempting to set an appointment for actions relating to that licensed
55 trade, occupation or profession within the state or counties contiguous to the state.

 407.1098. No person or entity shall make or cause to be made any telephone solicitation
2 **or automated call** to any residential subscriber in this state who has given notice to the attorney
3 general, in accordance with rules promulgated pursuant to section 407.1101 of such subscriber's
4 objection to receiving telephone solicitations **and automated calls**.

 407.1101. 1. The attorney general shall establish and provide for the operation of a
2 database to compile a list of telephone numbers of residential subscribers who object to receiving
3 telephone solicitations **and automated calls**. Such list is not intended to include any telephone
4 number primarily used for business or commercial purposes.

5 2. The attorney general shall promulgate rules and regulations governing the
6 establishment of a state no-call database as he or she deems necessary and appropriate to fully
7 implement the provisions of sections 407.1095 to 407.1110. The rules and regulations shall
8 include those which:

9 (1) Specify the methods by which each residential subscriber may give notice to the
10 attorney general or its contractor of his or her objection to receiving such solicitations **and calls**
11 or revocation of such notice. There shall be no cost to the subscriber for joining the database;

12 (2) Specify the length of time for which a notice of objection shall be effective and the
13 effect of a change of telephone number on such notice;

14 (3) Specify the methods by which such objections and revocations shall be collected and
15 added to the database;

16 (4) Specify the methods by which any person or entity desiring to make telephone
17 solicitations **or automated calls** will obtain access to the database as required to avoid calling
18 the telephone numbers of residential subscribers included in the database, including the cost
19 assessed to that person or entity for access to the database;

20 (5) Specify such other matters relating to the database that the attorney general deems
21 desirable.

22 3. If the Federal Communications Commission establishes a single national database of
23 telephone numbers of subscribers who object to receiving telephone solicitations pursuant to 47
24 U.S.C. Section 227(c)(3), the attorney general shall include that part of such single national
25 database that relates to Missouri in the database established pursuant to this section.

26 4. Information contained in the database established pursuant to this section shall be used
27 only for the purpose of compliance with section 407.1098 and this section or in a proceeding or
28 action pursuant to section 407.1107. Such information shall not be considered a public record
29 pursuant to chapter 610.

30 5. In April, July, October and January of each year, the attorney general shall be
31 encouraged to obtain subscription listings of residential subscribers in this state who have
32 arranged to be included on any national do-not-call list and add those telephone numbers to the
33 state do-not-call list.

34 6. The attorney general may utilize moneys appropriated from general revenue and
35 moneys appropriated from the merchandising practices revolving fund established in section
36 407.140 for the purposes of establishing and operating the state no-call database.

37 7. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
38 under the authority delegated in sections 407.1095 to 407.1110 shall become effective only if it
39 complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
40 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the

41 general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove
42 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
43 and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

407.1104. 1. Any person or entity who makes a telephone solicitation to any residential
2 subscriber in this state shall, at the beginning of such solicitation, state clearly the identity of the
3 person or entity initiating the solicitation.

4 2. No person or entity who makes a telephone solicitation [to a residential subscriber]
5 **or automated call** in this state shall knowingly use any method to block or otherwise circumvent
6 any subscriber's use of a caller identification service.

7 **3. No person or entity shall call a residential subscriber using an automatic dialing-**
8 **announcing device unless the device is designed and operated to disconnect within ten**
9 **seconds after the subscriber terminates the telephone call.**

407.1107. 1. The attorney general may initiate proceedings relating to a knowing
2 violation or threatened knowing violation of section 407.1098 or 407.1104. Such proceedings
3 may include, without limitation, an injunction, a civil penalty up to a maximum of five thousand
4 dollars for each knowing violation and additional relief in any court of competent jurisdiction.
5 The attorney general may issue investigative demands, issue subpoenas, administer oaths and
6 conduct hearings in the course of investigating a violation of section 407.1098 or 407.1104.

7 2. In addition to the penalties provided in subsection 1 of this section, any person or
8 entity that violates section 407.1104 shall be subject to all penalties, remedies and procedures
9 provided in sections 407.010 to 407.130. The remedies available in this section are cumulative
10 and in addition to any other remedies available by law.

11 3. Any person who has received more than one telephone solicitation **or automated call**
12 within any twelve-month period by or on behalf of the same person or entity in violation of
13 section 407.1098 or 407.1104 may either:

14 (1) Bring an action to enjoin such violation;

15 (2) Bring an action to recover for actual monetary loss from such knowing violation or
16 to receive up to five thousand dollars in damages for each such knowing violation, whichever
17 is greater; or

18 (3) Bring both such actions.

19 4. It shall be a defense in any action or proceeding brought pursuant to this section that
20 the defendant has established and implemented, with due care, reasonable practices and
21 procedures to effectively prevent telephone solicitations **or automated calls** in violation of
22 section 407.1098 or 407.1104.

23 5. No action or proceeding may be brought pursuant to this section:

24 (1) More than two years after the person bringing the action knew or should have known
25 of the occurrence of the alleged violation; or

26 (2) More than two years after the termination of any proceeding or action arising out of
27 the same violation or violations by the state of Missouri, whichever is later.

28 6. A court of this state may exercise personal jurisdiction over any nonresident or his or
29 her executor or administrator as to an action or proceeding authorized by this section in the
30 manner otherwise provided by law.

31 7. The remedies, duties, prohibitions and penalties of sections 407.1095 to 407.1107 are
32 not exclusive and are in addition to all other causes of action, remedies and penalties provided
33 by law.

34 8. No provider of telephone caller identification service shall be held liable for violations
35 of section 407.1098 or 407.1104 committed by other persons or entities.

36 **9. When a residential subscriber does not answer a call defined in paragraph (c)**
37 **of subdivision (1) of section 407.1095, it shall not be considered a violation of section**
38 **407.1098 or 407.1104 for the automated message to be left on such residential subscriber's**
39 **answering machine or voice mail message system, provided such automated message is**
40 **preceded by an announcement of such message by the live operator.**

407.1112. 1. Any person or entity making a political solicitation to any residential
2 **subscriber in this state shall clearly state who paid for the solicitation by using the words**
3 **"This message is paid for by" followed by the proper identification of the sponsor.**

4 (1) In regard to any political solicitation paid for by a candidate, as defined in
5 section 130.011, from the candidate's personal funds, it shall be sufficient identification to
6 state the first and last name by which the candidate is known.

7 (2) In regard to any political solicitation paid for by a committee, it shall be
8 sufficient identification to state the name of the committee as required to be registered by
9 subsection 5 of section 130.021, and the name and title of the committee treasurer serving
10 at the time the solicitation is made, and the political affiliation of the committee, if any.

11 (3) In regard to any political solicitation paid for by a corporation or other business
12 entity, labor organization, or any other organization not defined to be a committee by
13 subdivision (7) of section 130.011, and not organized especially for influencing one or more
14 elections, it shall be sufficient identification to state the name of the entity.

15 (4) In regard to any solicitation paid for by an individual or individuals, it shall be
16 sufficient identification to state the name of the individual or individuals.

17 **2. No person or entity shall agree to make a political solicitation or make such**
18 **solicitation until the solicitation meets the requirements of this section. Such person or**
19 **entity shall maintain a record of the name and address of the person or entity who**

20 purchased or requested such services and the amount paid for such services. The record
21 required by this subsection shall be kept for a period of two years after the date upon
22 which payment was received for such services.

23 3. Notwithstanding the provisions of sections 105.955 and 105.957 to the contrary,
24 any residential subscriber who receives a political solicitation in violation of this section
25 may file a complaint with the Missouri ethics commission. The Missouri ethics commission
26 shall address any complaint filed under this section in the same manner as it addresses
27 violations of subsection 8 of section 130.031.

28 4. Any committee making a political solicitation under the provisions of this section
29 shall be registered with the Missouri ethics commission.

30 5. Any entity described in subdivision (3) of subsection 1 of this section making an
31 automated call for the purpose of making a political solicitation, as the terms "automated
32 call" and "political solicitation" are defined in section 407.1095, the cost of which
33 individually or in aggregate exceeds five hundred dollars, shall register with the secretary
34 of state and the Missouri ethics commission prior to making any such automated political
35 solicitation. Any such solicitation by the entity shall additionally state who engaged the
36 organization to make the solicitation.

407.1113. In addition to any other information provided to a candidate at the time
2 such candidate files for an elective office with the secretary of state, the secretary of state
3 shall provide a summary of the provisions of section 407.1112 to the candidate.

2 [407.1110. The attorney general shall establish an advisory group
3 composed of government entities, local telecommunications companies,
4 businesses, and senior citizen and other community advocates to compile and
5 promote a list of educational literature to help consumers understand their options
6 with regard to telephone solicitations. The attorney general shall work with local
7 exchange telecommunications companies to disseminate to their residential
8 subscribers information about the availability of and instructions about how to
9 request educational literature from the attorney general. The attorney general
10 may enter into agreements with those companies for the purpose of dissemination
11 of the educational literature. The attorney general shall include on his or her
12 internet web site information that informs residential subscribers of their rights
13 to be placed on a no-call list and the various methods, including notice to the
14 attorney general, of placing their names on this no-call list. The attorney general
15 shall have this literature developed for dissemination to the public no later than
January 1, 2001.]

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